

ANTHONY J. SCOLA

Public Reprimand No. 2011-6

Order (public reprimand) entered by the Board on March 29, 2011.

SUMMARY¹

A petition for discipline was filed by bar counsel on April 9, 2010, against the respondent alleging that he deposited personal funds into his IOLTA account and paid bills directly from that account. The petition also alleged that the respondent knowingly linked his IOLTA account to PayPal (a system permitting direct online payments for the purchases of goods over the internet), paid PayPal directly from the account, and negligently misused client funds. Finally, bar counsel alleged that the respondent failed to keep the required records for his IOLTA account. The respondent, represented by counsel, filed an answer on June 15, 2010, essentially admitting the allegations, except the negligent misuse of client funds to pay for personal items. At the hearing, the parties specifically stated that the sanction at issue was whether the respondent should be admonished or publicly reprimanded.

The respondent was admitted to the Massachusetts bar on December 22, 1982. At all times relevant to the charges, the respondent had an IOLTA account. This matter arose initially from two notices of a dishonored check on the respondent's IOLTA account received by bar counsel in March 2007. These notices stemmed from a check for \$685.60, which was presented and dishonored twice, initially due to insufficient funds of \$89.06. Bar counsel sent letters to the respondent requesting his explanation for the insufficient funds in his IOLTA account. The respondent replied that the check returned for insufficient funds was a check to a law firm in Maine for a title search and other documentation to complete a land purchase for a client. The respondent stated that, on February 14, 2007, he had deposited a check for \$700 from his client into his IOLTA account, and then had sent the check for \$685.60 to the law firm in Maine. At the time of this deposit of client funds, his IOLTA account contained \$9.33. Prior to presentment of this check by the Maine law firm, a debit was made from the IOLTA account on February 27, 2007, by PayPal of \$39.90 for a purchase made by the respondent. The bank statements show that two other payments were made to PayPal from the IOLTA account on March 2 and March 12, 2007, of \$72.87 and \$70.99, respectively. When the respondent discovered that money had been withdrawn from his IOLTA account to pay PayPal, he removed the IOLTA account from PayPal access for payment. The respondent then deposited funds to cover the deficiency in the IOLTA account and pay the Maine law firm. As a result of these transactions, the respondent negligently misused client funds because the funds were withdrawn to pay PayPal; however, there was no deprivation.

On occasion, the respondent deposited personal funds into his IOLTA account. The respondent rarely used the account for holding client funds. By January 2002, the respondent had linked his IOLTA to PayPal. On sixteen occasions between January 2002 and March 2007, the respondent used his IOLTA account to pay for personal items purchased on the internet through PayPal. Thus, the respondent used funds from his IOLTA account to pay for personal items purchased over the internet. The respondent also withdrew earned fees and reimbursements for expenses from the IOLTA account by payment directly to PayPal instead of by check made payable to himself or his law firm.

With respect to Count One, the hearing committee found that, by depositing personal funds to his IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(b)(2), as in effect on and after July 1, 2004; by depositing personal funds into his IOLTA account between January 7, 2002 and July 1, 2004, the respondent violated Mass. R. Prof. C. 1.15(a) and (d), as in effect

¹ Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

prior to July 1, 2004. In addition, the respondent's conduct in having his IOLTA account linked to PayPal for his own personal use and his conduct in using client funds to purchase items through PayPal violated Mass. R. Prof. C. 1.15(b) and 8.4(h). The respondent's conduct in making withdrawals of fees or reimbursement of expenses from the account by payments to PayPal instead of by check payable to himself or his law firm violated Mass. R. Prof. C. 1.15(e)(4). By authorizing transactions from his IOLTA account that caused a negative balance in an individual client ledger, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(C).

With respect to the charges in Count Two, the respondent admitted that, since July 1, 2004, he failed to maintain proper records for his IOLTA account, namely a chronological check register with client identifiers and a running balance; individual client ledgers listing every deposit and expenditure and running balance; and a bank ledger for his own funds in the account listing every deposit and expenditure and running balance. In addition, he failed to perform a three-way reconciliation of the account at least every sixty days. As a result of the respondent's inadequate record keeping, in September 2009, bar counsel received another notice of a dishonored check: a check written by the respondent to himself for \$2,000 was dishonored because there was only \$975.94 in the account.

The hearing committee concluded that, as the respondent admitted in his answer, by failing to keep a chronological check register with a client identifier after every transaction and list of every transaction and running balance, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(B); by failing to keep individual client ledgers with a list of every transaction and running balance, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(C); by failing to keep a ledger of funds for bank fees and charges listing every deposit and expenditure and running balance, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(D); and by failing to perform a three-way reconciliation of the account at least every sixty days, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(E).

The hearing committee found, in aggravation, that the respondent's testimony in the disciplinary hearing established that he still did not understand the bookkeeping requirements of Mass. R. Prof. C. 1.15. However, the committee also noted that the respondent agreed at the hearing to have an audit by LOMAP to assist him in setting up proper bookkeeping procedures.

The hearing committee recommended that the respondent receive a public reprimand, and that he be required to have an audit by LOMAP and implement their recommendations, if and to the extent LOMAP found the referral appropriate; and otherwise, that he be required to attend a trust accounting course. Neither party appealed and the board, at its meeting on March 14, 2011, adopted the committee's findings of fact, conclusions of law and recommendation.